IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7680 of 1995

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

R M MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 07/08/97

ORAL JUDGEMENT

Petitioner herein is a former Government servant who was serving as an Executive Engineer in the Irrigation Department of the Government of Gujarat. A disciplinary proceeding was initiated against the petitioner by issuing a memorandum of charge on 18th May, 1987. The allegation was that the petitioner while serving as an Executive Engineer at Kevadia Colony, Narmada Project in the years 1983-84, made certain purchases contraryto the relevant rules and caused a loss

to the Government. A disciplinary proceeding was held in accordance with the relevant rules. The Inquiry Officer under his communication dated 31st January, 1992 submitted the inquiry report. Said disciplinary proceeding was held against several officers i.e. some superintending engineer, executive engineer, deputy executive engineers, store keeper etc. As far as the present petitioner is concerned, the inquiry officer recorded a finding that;

(a) the petitioner, with a view to bringing the purchases within his monetary jurisdiction, had split the purchase proposal into several proposals and had sanctioned such proposals;

(b) the defence pleaded by the petitioner was not tenable and the purchases made by the petitioner were unwarranted;

(c) the material purchased by the petitioner was not of standard specifications;

(d) the purchases were made from several cooperative societies and,therefore, comparable prices should have been invited;

Thus, the charges of committing irregularities in making purchases levelled against the petitioner have been held to be proved. The inquiry officer further held that if the petitioner had invited tenders, said material could have been purchased at a lesser price. However, the inquiry officer held that the Government had failed to prove the extent of loss suffered by the Government. The extent of higher prices paid by the petitioner was not proved.

2. After receiving the above referred inquiry report, the disciplinary authority differed from the findings recorded by the inquiry officer in respect of the loss suffered by the Government. The disciplinary authority, therefore, recorded its own finding. The disciplinary authority held that the standard prices and the prices paid by the petitioner were recorded in the chargesheet itself and the petitioner had not disputed the allegation made in the chargesheet. Thus, the extent of loss calculated and shown in the chargesheet should be held to have been proved and the inquiry officer was not right in holding that the Government had failed to prove

the same. Said findings recorded by the disciplinary officer was sent to the petitioner alongwith two statements containing calculations made by the disciplinary authority. The petitioner was called upon to submit his reply against the finding of guilt recorded by the disciplinary authority and the calculations submitted alongwith such findings. The petitioner was called upon to submit the reply within l5 days from the date of the receipt of the said communication dated 24th September, 1992.The petitioner, however, did not submit his reply within 15 days as stipulated. A reminder was sent to the petitioner on 17th December, 1992. The petitioner, however, did not avail of the said opportunity and submitted his reply on 5th February, 1994. Since the above referred reply dated 5th February, 1994 was not submitted by the petitioner within the stipulated period, it was not taken into consideration by the disciplinary authority. Considering the inquiry officer's report and the records of the disciplinary proceedings, and gravity of the misconduct proved, the disciplinary authority, under order dated 22nd August, 1994, removed the petitioner from service.Feeling aggrieved, the petitioner preferred application for review which too was rejected under communication dated 30th March, 1995. Feeling aggrieved, the petitioner has preferred this petition.

3. Learned advocate Mr. Parmar has appeared for the petitioner. He has challenged the impugned order of removal on the following grounds:

(a) the impugned order removing the petitioner from service is not a speaking order;

(b) the petitioner was not afforded an opportunity of hearing on the proposed penalty before the order of penalty was made;

(c) the other delinquents though have been found to guilty, have been dealt with leniently and have been imposed punishment of reduction in pension by Rs.100/-. Thus, the petitioner has been discriminated by imposing harsher punishment;

(d) one Mr. M.U.Purohit had held preliminary inquiry in the matter of said purchases and though he was named as departmental witnesses, he was not examined by the department nor was he permitted to be cross-examined by the petitioner.

(e) the material in question was purchased by the petitioner from cooperative societies and as such, no tenders were required to be invited and the petitioner, therefore, cannot be said to have committed any irregularity;

(f) one Mr. N.C.Shah predecessor of the petitioner in office had purchased certain pipes and flanges before the petitioner took over the charge at Kevadia Colony. The flanges purchased by Shri N.C.Shah were not in adequate numbers compared to the stock of pipes and the petitioner had,therefore, made remaining purchases. The action of the petitioner, therefore, cannot be said to be a misconduct at all;

(g) the statements annexed to the findings recorded by the disciplinary authority were not part of the records of the disciplinary proceedings and, therefore, could not have been relied upon by the disciplinary authority;

(h) the reply submitted by the petitioner on 5th February, 1994 has not been taken into consideration though the impugned order has been made six months after the said reply was submitted;

4. In my view, this Court, while exercising its power of judicial review under Article 226 of the Constitution, cannot sit in appeal over the findings recorded by the inquiry officer and the disciplinary authority. If on appreciation of the evidence, the guilt is held to have been established, the Court cannot reappreciate the evidence and substitute the findings of the inquiry officier/disciplinary authority by its own findings. I, therefore, do not propose to deal with the contentions whether the petitioner was required to invite the tenders or not; whether the purchases made by the petitioner were bonafide or not; whether the material purchased by him was according to the standard specifications or not; and whether the petitioner can be said to have committed any misconduct or not. Suffice it to say that the allegations of commission of misconduct have been held to have been proved by the inquiry officer as well as the disciplinary authority. The petitioner is held to have made unauthorized purchases at a higher price. If such an act of commission is proved, it certainly amounts to commission of an act of misconduct.

5. The petitioner was served with the report of the Inquiry Officer which has recorded the evidence led during the course of disciplinary proceedings and also findings after the appreciation of such evidence. The petitioner was also served with the reasoning recorded by the disciplinary authority for disagreeing with the findings recorded by the inquiry officer as regards the quantum of loss suffered by the Government. In my view, the reasons having been recorded in both the above referred documents, the disciplinary authority was not required to reiterate the same in the impugned order. The impugned order is required to be read with the findings recorded by the inquiry officer and the disciplinary authority. If so read, the impugned order cannot be said tobe a non-speaking order as contended by Mr. Parmar.

6. Mr. Parmar has relied upon the averments made in paragraph-8 of the petition and has submitted that in view of the provisions contained in Rule 10 (4) (1) (b), the petitioner was required to be heard on the proposed penalty before the order of punishment was made against the petitioner. I am afraid, I cannot accept this contention. The rule, Mr. Parmar has relied upon, has been substituted in the year 1986. Prior to 15th May, 1986, rule 10(4)(1)(b) as it stood than required that the disciplinary authority shall give to the Government servant a notice stating penalties proposed to be imposed on him and calling upon him to submit such representation as he may wish to make on the proposed penalty. Under Notification dated 16th April, 1986 published on 15th May, 1986, the whole of the rule 10(4) has been substituted. The substituted rule 10(4) provides, inter alia, that if the disciplinary authority is of the opinion that any of the penalties specified in items of (4) to (8) of rule 8 [i.e. any of the major penalties] should be imposed on the Government servant, it shall make an order imposing such penalty on it and it shall not be necessary to give a Government servant an opportunity of making representation against the penalty proposed to be imposed. In view of the above referred specific rule, the contention raised by Mr. Parmar requires to be rejected.

7. Mr. Parmar concedes that Mr. Purohit was not examined by the disciplinary authority. Since Mr. Purohit was not called upon to depose before the inquiry officer, the question of his cross-examination by the

petitioner, therefore, did not arise. Mr. Parmar, however, relies upon the reply submitted by the petitioner and has submitted that the petitioner had desired to cross examine any witnesses that may be examined by the disciplinary authority. He has relied upon the chargesheet and has pointed out that the name of Mr. Purohit was included in the list of witnesses to be examined by the disciplinary authority. Thus, runs his submission that the disciplinary authority was bound to examine said Mr. Purohit and the petitioner ought to have been given an opportunity to cross examine him. I am afraid,I cannot accept this argument advanced by Mr. Parmar. The question of right to cross examine the witness would arise only if the person is examined by a party. In the present case, it is not disputed that Shri Purohit was not summoned to depose before the inquiry officer. In absence of examination of the said witness by the disciplinary authority, no right to cross examine accrued to the petitioner. Further, the petitioner had never made an application to summon said Shri Purohit as a witness nor did he examine said Shri Purohit as his own witness. The inquiry, therefore, cannot be vitiated on account of non-examination of said Shri Purohit.

8. Mr. Parmar has next contended that for submitting reply to the notice issued under rule 10(2) of the Gujarat Civil Service [Discipline and Appeal] Rules, no period of limitation has been prescribed. Though late, the petitioner did submit his reply on 5th February, 1994 and the disciplinary authority was bound to take it into consideration before making the impugned order of punishment. I do agree with the contention raised by Mr. Parmar. The petitioner was served with a copy of report of inquiry officer and the reasons for disagreement recorded by the disciplinary authority on 24th September, 1992 and was called upon to submit reply within fifteen days. The petitioner did not submit his reply and, therefore, a reminder was sent on 17th December, 1992. Though the petitioner did not submit his reply even after the reminder was sent to him, the disciplinary authority did not proceed further with the inquiry to make the final order until after the expiry of six months after the petitioner submitted his reply on 5th February, 1994. Thus, before the disciplinary authority made its final order imposing punishment upon the petitioner on 22nd August, 1994, petitioner's reply was already received. I do not find any justification in the action of the disciplinary authority in not considering the said reply even though the same was received long before the final order was made. Further,

Mr. Parmar is right in contending that the disciplinary authority could not have relied upon the statements annexed to the findings of disagreement recorded by the disciplinary authority since they were not made part of the disciplinary proceedings before the inquiry officer. Mr. Bambhania learned Additional Government Pleader appearing for the respondents has not disputed that the said statements did not make part of the records of the disciplinary proceedings. I have perused the chargesheet. The standard prices and the prices paid by the petitioner and the extent of loss suffered by the Government have been precisely recorded in the said chargesheet, however, the abovereferred statements of calculation do not appear to have been produced anywhere on the records of the disciplinary proceeding. Thus, obviously, while making the impugned order, extreneous material has been taken into consideration and the petitioner's reply submitted on 5th February, 1994 has not been taken into consideration. This infirmity in the disciplinary proceeding should necessarily vitiate the final order made by the disciplinary authority.

9. In the result, this petition is allowed. The impugned order dated 22nd August, 1994 annexure "A" to the petition is quashed and set aside. The petitioner shall be reinstated in service with effect from the date of his removal from service. However, it should be noted that soon after his removal from service, the petitioner reached the age of superannuation. The disciplinary authority shall be at liberty to make fresh order after taking into consideration the reply submitted by the petitioner on 5th February, 1994 and after affording an opportunity of hearing to the petitioner, if he so desires and while making such final order, the disciplinary authority shall also take into consideration the punishment imposed upon the co-delinquents. Further, the petitioner should be treated to be under suspension from the date of his removal from service till the date he reached the age of superannuation. Such period of suspension shall be regulated in the manner provided under rule 152 of the Bombay Civil Service Rules while making the final order as aforesaid.

10. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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Vyas